



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0159]

RIN 1625-AA11

Regulated Navigation Area; Piscataqua River Channel Obstruction  
near Memorial Bridge, Piscataqua River, Portsmouth, NH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the Piscataqua River near the Memorial Bridge, Portsmouth, NH, due to debris obstructing the channel. This RNA establishes draft restrictions on vessels transiting the regulated area and prohibits vessels whose draft exceeds 12 feet from coming within 300 yards of the Memorial Bridge unless authorized by the First District Commander or the Captain of the Port (COTP), Sector Northern New England, or until the obstruction is cleared.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until March 31, 2014. For the purposes of enforcement, actual notice will be used from the date the rule was signed, March 7, 2014, until

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0159]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Lieutenant Junior Grade Elizabeth V. Gunn, Waterways Management Division at Coast Guard Sector Northern New England, at 207-767-0398 or e-mail at [Elizabeth.V.Gunn@uscg.mil](mailto:Elizabeth.V.Gunn@uscg.mil); or call Lieutenant Myles Greenway, Waterways Management at Coast Guard First District at 617-223-8385 or e-mail at [Myles.J.Greenway@uscg.mil](mailto:Myles.J.Greenway@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations at (202) 366-9826.

## SUPPLEMENTARY INFORMATION:

### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. Good cause exists because the Coast Guard was not notified of the obstruction until shortly after its discovery early on the morning of March 7, 2014. Thus, delaying the effectiveness of this rule to allow for a notice and comment period to run would inhibit the Coast Guard's ability to protect the boating public from the hazards associated with an unmarked underwater obstruction.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. For the reasons discussed in the preceding paragraph, delaying the effective date of this rule would be impracticable.

#### B. Basis and Purpose

Under the Ports and Waterways Safety Act, 33 U.S.C. 1221 et. seq., the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety.

The regulated navigation area is being issued to ensure the safety of vessels drawing more than 12 feet in draft which could potentially strike known debris.

#### C. Discussion of the Final Rule

At approximately 5:15 am on March 7<sup>th</sup>, 2014, a 600' oil tanker was outbound on the Piscataqua River when it struck pier 3 of the Memorial Bridge with its bow. The collision tore one fender panel completely off of the pier and damaged the two adjacent panels. The missing fender panel now presents a danger to vessels drawing a draft greater than 12 feet. This RNA is required to restrict the draft of vessels entering the area to protect said vessels from the safety hazards associated with this obstruction to the channel. This RNA will encompass all waters

within a 300 yard radius of a position 43°04'46"N, 70°45'10"W, in the vicinity of the Memorial Bridge between Portsmouth, NH and Badgers Island in Kittery, ME, and will be effective on March 7, 2014, at 4:00 p.m. until March 31, 2014 at 11:59 p.m.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic effect of this rule will not be significant for the following reasons: the RNA will be of limited duration. Vessels drawing a draft of less than 12 feet may still transit the area freely while vessels drawing a draft exceeding 12 feet may be authorized to transit the area with permission of the District Commander or the Captain of the Port, Sector Northern New England. Additionally, maritime advisories will be broadcast

during the duration of the enforcement period.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels drawing a draft greater than 12 feet. However, this temporary final rule will not have a significant economic impact on a substantial number of small entities for the same reasons discussed in the REGULATORY PLANNING AND REVIEW section above.

## 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or

options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to



minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g) of the Instruction because it involves the creation of an RNA. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0159 to read as follows:

§165.T01-0159 Regulated Navigation Area; Piscataqua River Channel

Obstruction near Memorial Bridge, Piscataqua River, Portsmouth, NH.

(a) Location. The following area is a Regulated Navigation Area (RNA): all navigable waters from surface to bottom within a 300 yard radius of position 43°04'46"N, 70°45'10"W.

(b) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply within the RNA, and in addition:

(2) No vessel with a draft of greater than 12 feet may transit this area unless authorized by the First District Commander or the Captain of the Port, Sector Northern New England.

(3) Persons and vessels may request permission to enter the Regulated Navigation Area by contacting the COTP or the COTP's on-scene representative on VHF-16 or via phone at 207-767-0303.

(4) The "designated representative" is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative may be on a Coast Guard vessel, a Coast Guard Auxiliary vessel, or onboard a local or state agency vessel that is authorized to act in support of the Coast Guard.

Additionally, the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(5) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(c) Effective and Enforcement Period. This rule is effective and will be enforced from March 7, 2014 until March 31, 2014.

Dated: March 7, 2014

D. B. Abel  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

[FR Doc. 2014-06229 Filed 03/20/2014 at 8:45 am; Publication Date: 03/21/2014]